thus the modern, eccentric, *nisi prius* ruling supposed by Mr. Tyng to have been made in *Poole* v. *Richardson*, and unfortunately published by him, operates unavoidably to oppress and endanger the accused, who, by reason of insanity, are innocent; and to encourage crime by shielding the guilty who feign insanity. Objectionable as the new dogma is in all the details of its practical operation, it is also, in a purely legal view, a violation of the elementary principle which admits the best evidence. * * *

We have inserted the foregoing opinion, chiefly, because of the learning and ability, as well as the exhaustive thoroughness of that portion of the dissenting opinion of Dow, J., upon the question of the admissibility of the opinions of unprofessional witnesses in regard to apparent insanity, in connection with the detail of the facts upon which such opinions are based. The learned judge shows, very conclusively, both upon authority and reason, that the opinion of the unprofessional witnesses in such cases is commonly far more reliable, as a basis of ultimate decision, in questions of sanity and mental capacity, than any specific facts which could possibly be gathered from the witnesses.

We have said, in our book on Wills, and in other places, all that we could desire to say both as to the rationale of the rule and the support which it receives from authority. The tendency of the American courts, in the last few years, has been largely in the direction contended for by the learned judge; and there seems to be little question it must ultimately prevail all but universally. We should rejoice at such a result as greatly tending towards the establishment of truth, with greater facility and certainty, in a very important class of cases.

We cannot doubt the profession will regard this opinion as one of great value upon this question, and as presenting the decisions bearing upon it more exhaustively than can be found in any other place. I. F. R.

Supreme Court of Pennsylvania.

GARSED ET AL. *v.* TURNER.

Instruction to the jury that "If the contract was broken by the defendants, the plaintiff is entitled to be put in the same position, pecuniarily, as he would have been, if the contract had been kept, regard being had to the fact that plaintiff soon after obtained other employment," held correct.

ERROR to the District Court of Philadelphia.

A. D. Campbell, *George M. Dallas*, and *James E. Gowen*, for plaintiffs in error.

Richard P. White and *George H. Earle*, for defendant in error.

The opinion of the court was delivered by

WILLIAMS, J.—The principal question in this case relates to the proper measure of damages for the breach of the alleged contract. The District Court instructed the jury that "if the contract was broken by the defendants, the plaintiff is entitled to be put in the same position,

pecuniarily, as he would have been if the contract had been kept, regard being had to the fact that the plaintiff soon afterwards obtained other employment." This instruction is complained of as erroneous, because, as contended, it furnished no proper rule by which to measure the damages, being but a general statement of the result to be arrived at, without any teaching as to how that result was to be attained. Where there is no prayer for instructions, the court cannot be convicted of error except for positive misdirection, though the instructions are not as full and specific as they might have been. Mere omission to charge, as we have often said, does not amount to misdirection, and where the proper rule has been laid down for the guidance of the jury, the omission of specific instructions to aid them in its application cannot be regarded, or assigned as error. As no instructions were requested in this case, the only question is, whether the court was guilty of misdirection in instructing the jury that the plaintiff was entitled to be put in the same position, pecuniarily, as he would have been if the contract had been kept. This was but another mode of saying that the plaintiff was entitled to recover what he would have made directly out of the contract if it had been fulfilled; and if so, there was no error in the instruction: *Hoy* v. *Granoble*, 10 Casey 9. This of course excludes remote or speculative damages. It was conceded on the argument that the proper measure of damages for the breach of the contract was the value of the bargain.

But what was the value of the bargain, if it was not the profit which the plaintiff would have made immediately out of the contract if he had been allowed to perform it? If the damages found by the jury would have put the plaintiff in the same position, pecuniarily, as he would have been if the contract had been kept, then it is clear that he recovered the value of his bargain, viz., the direct profit which he would have made out of the contract if it had not been broken. We think that the rule laid down by the court as the proper measure of damages was substantially correct, and we cannot say, therefore, that the jury were misled by the terms in which it was expressed. Nor was there any error in saying to the jury that "there is a difficulty in this case from the fact that the plaintiff had incurred considerable expense in fitting up the dye-house; but still the evidence shows that the defendants were willing that the plaintiff should remove the articles that he put there, so that the only loss in regard to these articles would seem to be the loss of a favorable opportunity of making profit by them." This was evidently said for the purpose of preventing the jury from finding as damages the expense incurred by the plaintiff in fitting up the dye-house, and limiting their finding, as it respects the articles which the plaintiff put in the dye-house, to the damages occasioned by the loss of a favorable opportunity of making profit by their use in performing the contract. If the improvements which the plaintiff made to the dye-house were necessary in order to enable him to perform the contract, then the loss of a favorable opportunity of making profit by their use was a circumstance proper for the consideration of the jury in determining the amount of damages to which the plaintiff was entitled, and the defendants have no reason to complain of the instruction. Besides, the evidence shows that the expense of fitting up the dye-house far exceeded the value of the articles when removed, and we see no reason why the plaintiff was not entitled to recover the difference. If so, the instruction was more favorable than

the defendants had any right to ask. The other assignments relate to the admission of evidence, and need not be particularly noticed. The record shows nothing but a general objection to the admission of the evidence complained of, and we have repeatedly said that such an objection will be of no avail unless it clearly appears that the evidence was not relevant or admissible for any purpose. Nor can any question as to the competency of a witness be raised under such an objection. In this case it does not clearly appear that the evidence was irrelevant and inadmissible. On the contrary, we think it tended to throw some light on the question of damages, and was, therefore, properly received.

Judgment affirmed.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

SUPREME JUDICIAL COURT OF NEW HAMPSHIRE.[1]

COURT OF CHANCERY OF NEW JERSEY.[2]

SUPREME COURT OF NEW YORK.[3]

SUPREME COURT OF KANSAS.[4]

SUPREME COURT OF PENNSYLVANIA.[5]

ACTION.

Right of, on Promise to third Person.—A promise, made by an individual, upon a valid consideration, to pay money to a third person, will sustain an action by the latter, in his own name, against the promissor: *Hall* v. *Robbins*, 61 Barb.

The defendant, in consideration of goods sold and delivered to him by a firm of V. & M., agreed with them to pay the plaintiff's firm a specified sum, being a debt due from V. & M. to them. *Held*, that the plaintiff, being the owner of the claim, might recover thereon, against the defendant: *Id.*

Venue—Suit in County where Defendant does not reside.—The statute of New Hampshire provides that "transitory actions, in which both parties are inhabitants of the state, may be brought in the county of which either party is an inhabitant, and not elsewhere." To an action on a promissory note, brought in the name of an endorsee, in a county where the defendant did not reside, the defendant pleaded in abatement, that the real owner of the note (and sole plaintiff in interest) resided in the same county with the defendant; and that the endorsement was made solely for the purpose of bringing the suit in the name of the

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[1] From the Judges; to appear in 49 or 50 N. H. Reports.

[2] From C. E. Green, Esq., Reporter; to appear in Vol. 7 of his Reports.

[3] From Hon. O. L. Barbour, Reporter; to appear in Vol. 61 of his Reports.

[4] From W. C. Webb, Esq., Reporter; to appear in 7 and 8 Kansas Reports.

[5] From P. F. Smith, Esq., Reporter; to appear in 67 Penna. Reports.